

Application No. 09/524,310

Filed: March 14, 2000

TC Art Unit: 3627

Confirmation No.: 8521

REMARKS

The instant Amendment is filed in response to the official action dated September 17, 2003. Reconsideration is respectfully requested.

The disposition of the claims is as follows:

Claims 1-7, 9-33, and 35-36 are currently pending.

Claims 1-7, 9-33, and 35-36 stand rejected.

Claims 1, 21-25, 30, 33, and 35-36 have been amended.

Claim 29 has been canceled.

The Examiner has rejected claims 1-7, 9-20, 26-28, 31-33, and 35-36 under 35 U.S.C. 102(e) as being anticipated by Kahn et al. (USP 6,401,079). The Examiner has also rejected claims 21-25, and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Kahn et al. The Applicants have amended base claims 1, 33, and 35-36 to include the limitations of original claim 29, which the Applicants have canceled. The Applicants respectfully submit that amended claims 1, 33, and 35-36 and the claims dependent therefrom recite non-obvious subject matter that distinguishes over the cited Kahn reference.

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With respect to original claims 21-25 and 29-30, the official action indicates that the Kahn reference does not explicitly disclose calculating compensation based on actual attendance collected from punch information with any or all of IN/OUT information, timestamps, and break indications collected by a reader or biometrics device. The official action further indicates that because the Kahn reference discloses payroll information including timesheet details for each employee, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have provided the payroll information for each employee with punch information, in order to provide the employer with an accurate indication of the employee's attendance.

However, the Applicants respectfully assert that amended base claims 1, 33, and 35-36, which include the limitations of original claim 29, are neither anticipated nor rendered obvious by the Kahn reference. For example, amended claim 1 recites a method of calculating an employee's compensation including, in a processor, forming one or more completed shifts responsive to identified transactions and the employee's schedule. As explained above, the Kahn reference does not explicitly disclose calculating

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compensation based on actual attendance collected from punch information. Because the identified transactions recited in amended claim 1 (and amended claims 33 and 35-36) may comprise such punch data along with scheduled special pays (see page 6, lines 18-19, of the application), the subject matter of amended claims 1, 33, and 35-36 distinguishes over the cited Kahn reference. Accordingly, the rejections of claims 1, 33, and 35-36 under 35 U.S.C. 102(e) are unwarranted and should be withdrawn.

It is well settled that results and advantages produced by claimed subject matter cannot be ignored when determining the patentability of the subject matter "as a whole". Because the Kahn reference fails to recognize the results and advantages produced by the subject matter of amended claims 1, 33, and 35-36, and, in fact, is completely devoid of disclosure relating to such results and advantages, amended claims 1, 33, and 35-36 are not rendered obvious by the Kahn reference. Accordingly, the rejections of amended claims 1, 33, and 35-36 under 35 U.S.C. 103(a) are unwarranted and should be withdrawn.

Specifically, transactions, e.g., "punches", are entered into the Applicants' system at one or more entry terminals 4 (e.g., a

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time clock employing magnetically or optically encoded cards that are "swiped" through a magnetic or optical card reader by the employee), which are polled by a poller/merger 6 (see page 1, lines 11-13, page 4, lines 19-20, and Fig. 1 of the application). For example, a "punch in" may specify a time when the employee begins work, either at the start of the work day or at the end of a scheduled break; and, a "punch out" may specify a time when the employee finishes work, either at the start of a scheduled break or at the end of the work day (see page 5, line 27, to page 6, line 2, of the application). Actual punches can come in a number of varieties, e.g., IN/OUT punches, transfer punches that change the employee's Labor Allocation Class (LAC), and special pay punches that award the employee special pay (see page 6, lines 15-18, of the application). Accordingly, identified transactions such as punches may specify (1) actual times when the employee begins and finishes sub-shifts and completed shifts (IN/OUT punches), (2) actual times when the employee changes work assignments during the shift (transfer punches), and (3) whether the employee should be awarded a certain amount of special pay time (special pay punches).

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Because the Applicants' system operates on identified transactions such as punch data, the Applicants' system can advantageously and automatically determine the compensation for an employee who (1) begins and finishes work at various times during a complete shift, (2) performs different duties during various sub-shifts within the complete shift, and (3) qualifies for certain amounts of special pay time.

Another important advantage of the Applicants' system is that it facilitates the making of "shift assignments", i.e., the association of a set of transactions occurring during a limited contiguous time period with a shift and a set of work rules. For example, when making a shift assignment, the earliest transaction in a set of transactions may be identified first. Next, one or more shifts qualified for the shift assignment may be found based on this earliest transaction, and among these shifts, the best match may be selected for the shift assignment (see page 6, lines 20-31, of the application). Because the Applicants' system operates on identified transactions such as IN/OUT punches, transfer punches, and special pay punches, the Applicants' system has easy access to all of the data necessary for automatically making such shift assignments.

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In contrast, as indicated in the official action, Kahn et al. does not disclose calculating compensation based on identified transactions such as actual attendance collected from punch data. Instead, the Kahn system merely calculates compensation based on timesheet data (i.e., hours worked and paid time-off during a particular pay period) and non-timesheet data (i.e., bonuses, commissions, tips, and other non-hourly or salary based earnings during the pay period). Such timesheet and non-timesheet data is collected, i.e., imported or manually keyed into the Kahn system, on a daily basis or at the end of the pay period (see column 15, lines 48-57, of Kahn et al.).

Because such timesheet and non-timesheet data operated on by the Kahn system does not comprise information relating to different duties that may be performed by an employee during various sub-shifts within a complete shift (i.e., transactions comprising transfer punch data), but instead merely includes information relating to hours worked and special earnings, the Kahn system cannot be used for automatically making shift assignments. To make such automatic shift assignments, data relating to the employee's duties would likely be manually keyed

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into the Kahn system. Being able to make shift assignments automatically is an important advantage of the Applicants' system.

Because the Kahn reference fails to recognize the results and advantages produced by the subject matter of amended claims 1, 33, and 35-36, e.g., providing a system and method capable of making shift assignments automatically, amended claims 1, 33, and 35-36 are not rendered obvious by the Kahn reference. Accordingly, the rejections of amended claims 1, 33, and 35-36 and the claims dependent therefrom under 35 U.S.C. 103(a) are unwarranted and should be withdrawn.

In view of the foregoing, it is respectfully submitted that the present application is in a condition for allowance. Early and favorable action is respectfully requested.

The Examiner is encouraged to telephone the undersigned Attorney to discuss any matter that would expedite allowance of

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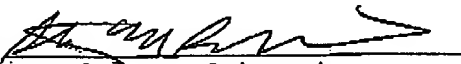
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the present application.

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